The Responsibility to Protect and International Criminal Justice
The question of the legitimacy of humanitarian intervention is one of the most critical and debated among International Law scholars.

Why?
It requires to find a correct balance between fundamental principles of international law: Respect of State Sovereignty and concrete and effective Protection of Human Rights.
Sovereignty and equality among States as fundamental principles of International Law: Sovereign States are the most important subjects of international law, being at the same time the addressees of International Law and the creators of norms
The first and the most important rule of international law is mutual respect of the sovereignty of each State. = principle of non-intervention in internal affairs

respect of sovereignty is considered to be at the basis of the maintenance of international order.
The Dilemma (1/3)

**International Protection of Human Rights**

- is one of the most important achievements after the Second World War
- the UN Charter for the first time brought the protection of human rights at the international level
- since the 1945 many instruments were adopted by the UN and in regional contexts as well
Human Rights Law

A system of rules designed to protect the human being
Sovereignty and the Individual (1)

The Westphalian Order (1648):
The International Community

↓

a society of
States
Traditionally:
• Sovereignty and Non-Intervention
• The Individual

is placed under the authority of the State, within its domestic jurisdiction.

No rights under International Law
The Dilemma (1/3)

Protection of Human Rights - UN Instruments

• Universal Declaration of Human Rights, 1948
• International Convention on the Elimination of All Forms of Racial Discrimination, 1965
• International Covenant on Civil and Political Rights, 1966
• International Covenant on Economic, Social and Cultural Rights, 1966
• Convention on the Elimination of All Forms of Discrimination against Women, 1979
• Convention against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment, 1984
• Convention on the Rights of the Child, 1989
The Dilemma (1/3)

Protection of human rights - regional instruments

Europe
• European Convention on Human Rights, 1950

America
• American Convention on Human Rights, 1969

Africa
• African Charter on Human and Peoples' Rights, 1981
The Corner Stone Principle

Universal Declaration of Human Rights

Article 1:

“All human beings are born free and equal in dignity and rights”.
<table>
<thead>
<tr>
<th>The Dilemma (2/3)</th>
</tr>
</thead>
<tbody>
<tr>
<td>The issue of Humanitarian Intervention deals with the regulation of the <strong>Use of Force</strong> in International Law</td>
</tr>
</tbody>
</table>
The Dilemma (2/3)

The UN Charter:

- prohibits the recourse to force for the resolution of States’ disputes (Article 2.3 and 4)
- makes safe just the “inherent right to self defence” of each State in case of aggression (Article 51)
- provides a system of collective security recognizing a central role to the Security Council (Chapter VII)
Some major events have influenced “the practice and thinking of war, as well as the complex relationship between international violence, domestic oppression and human rights”:

- End of the Cold War (new balances of power)
- Globalization
- International Terrorism
- Development of Weapons and delivery systems
- Relationship between respect of human rights and international peace and security
The Dilemma (2/3)

Lack of efficiency in Security Council responses
The issue of Humanitarian Intervention is linked to political and even moral elements.

The debate generates “an explosive mixture of ethics, politics and law; and it is not always clear when scholars are drawing the dividing lines among the three, if at all”
• the need not to remain passive in front of the commission of a large scale of atrocities

• the doubt: is a military action a good way to force or improve the respect of human rights?
Three main positions in Legal Doctrine:

1. **Illegal**
2. **Legal** (consistent with international law) or at least legitimate (even if not perfectly consistent with international law, it could be considered acceptable on different grounds)
3. **Legitimate** but just under some specific conditions (conditional legitimacy)
According to Art. 2.4 UN Charter:

“All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the purposes of the United Nations”.

Territorial integrity = territorial inviolability
“...any humanitarian intervention, however limited, constitutes a temporary violation of the target State’s political independence and territorial integrity if it is carried out against that state’s wishes”
International Court of Justice Judgement 1986, “Military and Paramilitary Activities in and against Nicaragua” (Nicaragua vs USA):

“...the protection of human rights, a strictly humanitarian objective, cannot be compatible with the mining of ports, the destruction of oil installations, or again with the training, arming and equipping of the contras”
1. Interpretation of Charter Provisions

- art. 2 par. 4: humanitarian intervention is not against the territorial integrity of another State or its political independence and it’s consistent with UN purposes because it aims to protect human rights, pursuing indeed one of the UN main purposes.
- other provisions such as Articles 55 and 56 would suggest the commitment to protect human rights.
Article 55: “With a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations (...) the United Nations shall promote: (...) universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion”

Article 56: “All Members pledge themselves to take joint and separate action in cooperation with the Organization for the achievement of the purposes set forth in Article 55.”
2. Balancing Different UN Purposes

Human Rights are so important to be part of the maintenance of international peace and security: in case of gross violations of human rights, the prohibition of the use of force would be reduced.
3. Other Arguments

the prohibition was formulated because an alternative solution (a good functioning of the SC) was designed: if the solution doesn’t work properly (for example because of the veto exercise) the prohibition would be removed
HI in International Law

LEGITIMATE but only if it respects some criteria

- taking place just in the most serious cases (crimes against humanity, genocide)
- pursuing a genuine humanitarian purpose (at least it should be the main reason for intervening)
- use of force strictly proportionate to the needs: (Hippocratic principle: first do not harm)
- limited in time
- respect of human rights and humanitarian law by those who intervene
<table>
<thead>
<tr>
<th>The Responsibility to Protect</th>
</tr>
</thead>
<tbody>
<tr>
<td>In 2000 the Canadian government invites an international commission (International Commission on Intervention and State Sovereignty) to consider the question of the legitimacy of humanitarian intervention:</td>
</tr>
</tbody>
</table>

whether, to what extent, under what kind of conditions is it legitimate for States to intervene - in particular through military action – in another State to protect people who are suffering grave violations of human rights and to stop such violations?
The Responsibility to Protect

In 2001 the Commission elaborated a doctrine called “the Responsibility to Protect” (R2P); it can be considered to some extent a new approach to the doctrine of Humanitarian Intervention.
The R2P: Basic Texts


- Secretary General, *In larger freedom: toward development, security and human rights for all*, March 2005

- General Assembly, 2005 *World Summit Outcome*, October 2005

- Security Council, Resolution n. 1674, 28 April 2006 on the protection of civilians in armed conflicts

- Special Adviser with a focus on the Responsibility to Protect, February 2008

- Secretary General, Implementing the Responsibility to Protect, January 2009 – Early warning, assessment and the responsibility to protect July 2010

- General Assembly, Resolution n. 63/308, September 2009
1. The theoretical foundation of the concept of “R2P”: the idea that sovereign States have a responsibility to protect their own citizens from human rights violations; when they are unwilling or unable to do so, that responsibility must be borne by the broader community of States

the international community has a complementary duty to protect
The Responsibility to Protect (R2P)

- In cases of genocide, war crimes, ethnic cleansing, crimes against humanity and the State fails to protect

   The International Community
2. The question of military intervention has to be considered as part of a broader context: the responsibility to protect embraces three specific dimensions:

- **the responsibility to prevent** (to face root and direct causes of the crises)
- **the responsibility to react** (to respond to grave situations in a proper way, but just in extreme cases, with military intervention)
- **the responsibility to rebuild** (to provide, especially after a military intervention, full assistance with reconstruction and reconciliation).
The Responsibility to Protect

3. The legitimacy of military intervention is considered to be conditional on some elements

- just cause threshold
- right intention
- last resort
- proportional means
- reasonable prospects
- right authority
The Responsibility to Protect

Just Cause Threshold

Military intervention can occur when there is:

- a large scale loss of life, actual or apprehended, with genocidal intent or not, which is the product either of deliberate State action, or State neglect or inability to act, or a failed State situation; or

- a large scale ‘ethnic cleansing’, actual or apprehended, whether carried out by killing, forced expulsion, acts of terror or rape
**The Responsibility to Protect**

**Right Intention**

- The primary purpose of the intervention, whatever other motives intervening states may have, must be to halt or avert human suffering

**Last Resort**

- Military intervention can only be justified when every non-military option for the prevention or peaceful resolution of the crisis has been explored, with reasonable grounds for believing lesser measures would not have succeeded
The Responsibility to Protect

Proportional means

• The scale, duration and intensity of the planned military intervention should be the minimum necessary to secure the defined human protection objective

Reasonable prospects

• There must be a reasonable chance of success in halting or averting the suffering which has justified the intervention, with the consequences of action not likely to be worse than the consequences of inaction
Right authority

the intervention should be always authorized by someone who legitimately has the power to do so:

no better body than the Security Council to authorize military intervention for human protection purposes

- Security Council authorization should in all cases be sought before any military intervention
- Security Council should deal promptly with any request for authority to intervene where there are allegations of large scale loss of human life or ethnic cleansing
- permanent members should agree not to apply their veto power, in matters where their vital State interests are not involved
The Responsibility to Protect

If the Security Council rejects a proposal or fails to deal with it in a reasonable time, there are two alternative options:

→ consideration of the matter by the General Assembly in Emergency Special Session under the “Uniting for Peace” procedure

→ action by regional or sub-regional organizations under Chapter VIII of the Charter, subject to their seeking subsequent authorisation from the Security Council
“Uniting for Peace” Procedure

Res. 377 (V) 1950

“if the Security Council, because of lack of unanimity of the permanent members, fails to exercise its primary responsibility for the maintenance of international peace and security in any case where there appears to be a threat to the peace, breach of the peace, or act of aggression, the General Assembly shall consider the matter immediately with a view to making appropriate recommendations to Members for collective measures, including, in the case of a breach of the peace or act of aggression, the use of armed force”.

(to a large extent opposed by scholars and not to be found in practice)
The Responsibility to Protect

Action by Regional Organisations

Action by regional or sub-regional organizations under Chapter VIII prior authorization from the Security Council (necessary according to art. 53 UN Charter)

ECOWAS in Liberia (1990) and Sierra Leone (1997)
The Responsibility to Protect

What’s new?

1. Definition of **SOVEREIGNTY** in terms of **RESPONSIBILITY**
2. Broader context for the intervention
3. Alternatives to Security Council authorisation
1. High Level Panel on Threats, Challenges and Change
A More Secure World: Our shared responsibility, 2004
Sovereignty and Responsibility

“In signing the Charter of the UN, States not only benefit from the privileges of sovereignty but also accept its responsibilities”.

“The principles of collective security mean that some portion of those responsibilities should be taken up by the international community, (...) to help build the necessary capacity or supply the necessary protection, as the case may be”.
Chapter VII of the Charter of the United Nations, internal threats and the responsibility to protect

“We endorse the emerging norm that there is a collective international responsibility to protect, exercisable by the Security Council authorizing military intervention as a last resort, in the event of genocide and other large-scale killing, ethnic cleansing or serious violations of international humanitarian law which sovereign Governments have proved powerless or unwilling to prevent.”
Authorization from the Security Council should in all cases be sought for regional peace operations, recognizing that in some urgent situations that authorization may be sought after such operations have commenced.
2.
UN Secretary General
*In Larger Freedom: Toward development, security and human rights for all*, 2005
R2P in UN Documents and Practice

Freedom to live in dignity
Rule of Law

ICISS and HLP “endorsed what they described as an “emerging norm that there is a collective responsibility to protect”. While I am well aware of the sensitivities involved in this issue, I strongly agree with this approach. I believe that we must embrace the responsibility to protect, and, when necessary, we must act on it.”
3. General Assembly
2005 World Summit Outcome Document
138. Each individual State has the responsibility to protect its populations from genocide, war crimes, ethnic cleansing and crimes against humanity. This responsibility entails the prevention of such crimes, including their incitement, through appropriate and necessary means. We accept that responsibility and will act in accordance with it. The international community should, as appropriate, encourage and help States to exercise this responsibility and support the United Nations in establishing an early warning capability.

139. The international community, through the United Nations, also has the responsibility to use appropriate diplomatic, humanitarian and other peaceful means, in accordance with Chapters VI and VII of the Charter, to help protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity. In this context, we are prepared to take collective action, in a timely and decisive manner, through the Security Council, in accordance with the Charter, including Chapter VII, on a case-by-case basis and in cooperation with relevant regional organizations as appropriate, should peaceful means be inadequate and national authorities manifestly fail to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity. (…)
At the 2005 World Summit the assembled Heads of State and Government agreed that R2P rests on three pillars:

1. The responsibility of the state to protect its population from genocide, war crimes, ethnic cleansing and crimes against humanity and from their incitement.

2. The commitment of the international community to assist states in meeting these obligations.

3. The responsibility of the member states to respond in a timely and decisive manner when a state is manifestly failing to provide such protection.
4. Security Council
5.

**Special Adviser with a focus on the Responsibility to Protect**, Jennifer Welsh

under the overall guidance of Adama Dieng, the Secretary-General’s

**Special Adviser on the Prevention of Genocide**
“R2P is not a new code for humanitarian intervention. Rather it is build on a more positive and affirmative concept of sovereignty as responsibility”

Secretary-General Berlin Speech (July 2008) on Responsible Sovereignty: International Cooperation for a Changed World
R2P in UN Documents and Practice

Distinction from the humanitarian intervention concept:

1. R2P has the second pillar (international assistance in helping the state to meet its core protection responsibilities)

2. R2P considers a wider spectrum of tools

3. R2P puts relatively little weight on military responses

(Edward Luck, Special Adviser with a focus on R2P)
6.
Secretary General,
Implementing the Responsibility to Protect
January 2009
R2P in UN Documents and Practice

R2P to be implemented on three pillars:

1) Protection responsibilities of the State
2) International assistance and capacity-building
3) Timely and decisive response
1. **Protection responsibilities of the State**

   The responsibility derives from the nature of the State and pre-existing and continuing legal obligations.

   - Ratification of HR, IHL, refugee law instruments
   - International Criminal Court as an R2P instrument
2. **International assistance and capacity building**

It requires cooperation of member states, regional and sub-regional arrangements, civil society and private sector

- early warning
- preventive deployment
- rule of law
- Peace Building Commission
3. **Timely and decisive response**

Responsibility of Member States to respond collectively in a timely and decisive manner when a State is manifestly failing to provide protection

- non-coercive measures
- targeted sanctions,
- arms embargo
- collective enforcement measures
- Uniting for Peace procedure
Main areas of consensus:

- legal basis of R2P and consistency with UN Charter, HR and IHL
  - three pillars strategy
  - R2P scope restricted to four crimes
- Africa’s pioneering role in shifting from non-interference to non-indifference
R2P in UN Documents and Practice

Main areas of concern:

- selectivity and double standards
- risk of unilateral intervention
- dissent on General Assembly and Security Council roles
Regional Action under Chapter VIII

Regional arrangements or agencies may offer a forum to achieve pacific settlement of local disputes (52.2 and 52.3 UN Charter)
R2P and African Union

Article 53, UN Charter

The Security Council shall, where appropriate, utilize such regional arrangements or agencies for enforcement action under its authority

No enforcement action shall be taken under regional arrangements or by regional agencies without the authorization of the Security Council
R2P and African Union

African Union
Constitutive Act (2000)

Art. 4h (Principles)

(...) The right of the Union to intervene in a Member State pursuant to a decision of the Assembly in respect of grave circumstances, namely war crimes, genocide and crimes against humanity
Art. 4, j (Principles)

(... the right of the Union to intervene in a Member State pursuant to a decision of the Assembly in respect of grave circumstances, namely war crimes, genocide and crimes against humanity, in accordance with Article 4(h) of the Constitutive Act;
The common African position on the proposed reform of the UN ("ezulwini consensus") (2005)

“the intervention of Regional Organizations should be with the approval of the Security Council; although in certain situations, such approval could be granted “after the fact” in circumstances requiring urgent action”
R2P and the ICC: Responsibility and Accountability

- President Omar Hassan Ahmad Al Bashir: the first Head of State in Office
- Crimes Against Humanity and War Crimes
- Prosecutor Luis Moreno Ocampo
The ICC Pre-Trial Decision

“The Judges decided today that Omar Al Bashir should be arrested to stand trial for crimes committed against millions of civilians in Darfur; his victims are the very civilians that he, as President, was supposed to protect”

(March 4, 2009)
Libya 2011

- Libya 2011:
- an excellent example of R2P at work (G. Evans)
- Resolution 1970
  unanimously adopted by the Security Council: stop violence; targeted sanctions; arms embargo; threat to prosecute perpetrators of crimes against humanity by the ICC.
Libya 2011

• “Recalling the Libyan authorities’ responsibility to protect its population”
Libya 2011

- UNSC Res. 1973
- Failure of Libya to comply:
- authorisation of military measures, but limited to No-fly zone and civilian protection
26 February 2011, the United Nations Security Council
decided unanimously to refer the situation in Libya since 15 February 2011
to the ICC Prosecutor.

3 March 2011, the ICC Prosecutor announced his decision
to open an investigation in the situation in Libya,
27 June 2011, Pre-Trial Chamber I issued three warrants of arrest
respectively for
Muammar Mohammed Abu Minyar Gaddafi,
Saif Al-Islam Gaddafi and Abdullah Al-Senussi
for crimes against humanity (murder and persecution)
allegedly committed across Libya from 15 until at least 28 February 2011,
through the State apparatus and Security Forces.

22 November 2011, Pre-Trial Chamber I
formally terminated the case against Muammar Gaddafi due to his death.
The two other suspects are not in the custody of the Court.
R2P Problems and Limits

• Use of Force and Military Intervention:
  • To protect the civilian population
  or

  • To impose a change of regime?
Syria, 2012 - 2015

The Failure of the International Community
Syria, 2012

• The UN Security Council paralysed
• UNSC Resolution 1975
• “Reaffirming that it is the responsibility of Côte d’Ivoire to promote and protect all human rights and fundamental freedoms, to investigate alleged violations of human rights and international law and to bring to justice those responsible for such acts”
Nature and Legal Status of R2P

- R2P as a new formulation for humanitarian intervention
- simply a UN policy/doctrine or an emerging rule of international law?
A book

Professor the Honourable Gareth Evans, QC, Former Australian Foreign Minister
Ludovica Poli,

La responsabilità di proteggere e il ruolo delle organizzazioni internazionali regionali,

Edizioni Scientifiche Italiane 2011
R2P and HR: an Assessment

• “The UN adoption of the Responsibility to Protect was a red-letter day for human rights”

Mary Robinson,
UN High Commissioner for Human Rights, 1997-2002
• International Humanitarian Law (IHL) and Human Rights Law (HR): both parts of International Law
• Different origin and historical development
• Different sources of law, sets of rules and enforcement mechanisms

but

IHL and HR are interlocked with elements of overlapping and convergence
International Humanitarian Law of Armed Conflicts

• A system of rules designed to limit the effects of violence in war and to protect the victims of armed conflicts
The Geneva Conventions, 12 August 1949

- Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field
- Convention (II) for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea
- Convention (III) relative to the Treatment of Prisoners of War
- Convention (IV) relative to the Protection of Civilian Persons in Time of War
The Additional Protocols
8 June 1977

- Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I)
- Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II)
Additional Protocol III
8 December 2005

• Protocol additional to the Geneva Conventions of 12 August 1949, and relating to the Adoption of an Additional Distinctive Emblem (Protocol III)
Convention for the Protection of Cultural Property in the Event of Armed Conflict

- The Hague, 14 May 1954
- “The High Contracting Parties

Being convinced that damage to cultural property belonging to any people whatsoever means damage to the cultural heritage of all mankind”
Other Relevant Conventions: The Laws of War

- Protocol for the Prohibition of the Use of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare. Geneva, 17 June 1925
- Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction. Opened for Signature at London, Moscow and Washington. 10 April 1972
- Convention on the prohibition of the development, production, stockpiling and use of chemical weapons and on their destruction, Paris 13 January 1993
- Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction, 18 September 1997
- Convention on Cluster Munitions, 30 May 2008
Human Rights Law

A Branch of Public International Law
Origins

• 1945, in response to the atrocities of World War II

• The United Nations Charter Article 1 “...and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion”
Universal Declaration of Human Rights, 10 December 1948

Article 1:
“All human beings are born free and equal in dignity and rights”.
The 1966 Covenants

- United Nations, 16 December 1966

- International Covenant on Civil and Political Rights
- The Optional Protocol to the International Covenant on Civil and Political Rights
- The Second Optional Protocol to the International Covenant on Civil and Political Rights

- International Covenant on Economic, Social and Cultural Rights
Human Rights and the Security Council

- Gross violations of HR have been considered by the UN Security Council as a threat to peace
- → competence under Chapter VII of the Charter
Customary Law

• Many relevant principles and rules now belong to customary law, and therefore apply to all the participants in an armed conflict
Convergence of IHL and HRL

• In conflict situations, an in particular in non-international armed conflicts and in cases of occupation, there is a convergence between IHL provisions and HR rules

• All gaps are filled, and protecting norms always apply
Point of convergence

- IHL and HR rules apply to all human beings involved, in the name of the Principle of Humanity.

From the Saint Petersburg Declaration to our days, the cornerstone is: ...*les lois de l’humanité, the laws of humanity* ...
Crimes under International Law

- Grave Breaches of the Geneva Conventions
- Serious Violations of the laws and customs of war

are

“Crimes under International Law”
The Treaty of Versailles, 1919

Trial of Kaiser Wilhelm II:

Article 227 provided for the prosecution of Wilhelm "for a supreme offence against international morality and the sanctity of treaties"
Relevant Conventions:
International Criminal Law (1)

- Agreement for the Prosecution and Punishment of the Major War Criminals of the European Axis, and Charter of the International Military Tribunal. London, 8 August 1945-
- Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity, 26 November 1968.
Relevant Conventions:
International Criminal Law (2)

- Statute of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan citizens responsible for genocide and other such violations committed in the territory of neighbouring States, between 1 January 1994 and 31 December 1994, 8 November 1994.
- Agreement for and Statute of the Special Court for Sierra Leone, 16 January 2002
International Criminal Law and Justice

• A new branch of international law developed since World War II: **International Criminal Law**.

• International Tribunals have been established and today the international community has an **International Criminal Justice**
Nuremberg

• The London Agreement, 8 August 1945 established an International Military Tribunal
For the Prosecution and Punishment of the Major War Criminals of the European Axis
Crimes under the Jurisdiction of the IMT

► Crimes Against Peace

► War Crimes

► Crimes Against Humanity
The Nuremberg Judgment (1)

Death Penalty for Goering, Ribbentrop, Frank, Kaltenbrunner, Keitel, Jodl, Streicher, Frick, Rosenberg, Sauckel, Seyss-Inquart, and Bormann
The Nuremberg Judgment (2)

Life Imprisonment for:

Erich Raeder,
Commander in Chief
of the Kriegsmarine

Rudolf Hess,
Deputy Führer

Walter Funk,
Head of the
Reichsbank
The Nuremberg Judgment (3)

Minor Penalties:

von Schirach 20 Years

Speer 20 Years

von Neurath 15 Years

Doenitz 10 Years
The Nuremberg Judgment (4)

Acquitted:

Fritsche

Von Papen

Schacht
Tokyo

• A special proclamation of General Douglas MacArthur, as Supreme Commander in the Far East, following an agreement among the Allies, established the International Criminal Tribunal for the Far East
The Tokyo Trial

• 16 Sentenced to death by hanging, among which:
  Koki Hirota, Prime Minister and Foreign Minister
• Seishiro Itagaki, War Minister
General Assembly Resolution

• UN General Assembly Resolution 95-I:

    **Affirms** the principles of international law **recognized** by the Charter of the Nuremberg Tribunal and the judgment of the Tribunal;

    Directs the Committee on the codification of international law established by the resolution of the General Assembly of 11 December 1946, to treat as a matter of primary importance plans for the formation, in the context of a general codification of offences against the peace and security of mankind, or of an International Criminal Code, of the principles recognized in the Charter of the Nuremberg Tribunal and in the judgment of the Tribunal.
Principles (1)

- The International Law Commission (a subsidiary body of the General Assembly) adopted in 1950 seven principles:
  
  - **Principle I**
    Any person who commits an act which constitutes a crime under international law is responsible therefor and liable to punishment.
  
  - **Principle II**
    The fact that internal law does not impose a penalty for an act which constitutes a crime under international law does not relieve the person who committed the act from responsibility under international law.
Principles (2)

- **Principle III**
  The fact that a person who committed an act which constitutes a crime under international law acted as Head of State or responsible Government official does not relieve him from responsibility under international law.

- **Principle IV**
  The fact that a person acted pursuant to order of his Government or of a superior does not relieve him from responsibility under international law, provided a moral choice was in fact possible to him.

- **Principle V**
  Any person charged with a crime under international law has the right to a fair trial on the facts and law.
Principles (3)

- **Principle VI**
  The crimes hereinafter set out are punishable as **crimes under international law**:
  - Crimes against peace
  - War crimes
  - Crimes against humanity

- **Principle VII**
  Complicity in the commission of a crime against peace, a war crime, or a crime against humanity as set forth in Principles VI is a crime under international law.
Atrocities in the Former Yugoslavia (1)

Massacres, Ethnic Cleansing
Atrocities in the Former Yugoslavia (2)

Violence on Civilians
Atrocities in the Former Yugoslavia (2)

Rape and Sexual Violence as a Means and Method of Warfare
Genocide in Rwanda, 1994

More than 800,000 victims
Genocide in Rwanda (2)

“A Problem from Hell” (Samantha Power)
Genocide in Rwanda (3)

General Romeo Dallaire,
“Shake Hands with the Devil
The Failure of Humanity in Rwanda”
The Security Council

“Action” Under Chapter VII of the UN Charter
• The International Criminal Tribunal for the Former Yugoslavia was established by the Security Council in 1993
The ICTY: Results (1)

• THE TRIBUNAL HAS INDICTED 161 PERSONS FOR SERIOUS VIOLATIONS OF INTERNATIONAL HUMANITARIAN LAW COMMITED IN THE TERRITORY OF THE FORMER YUGOSLAVIA

• CONCLUDED PROCEEDINGS FOR 147 ACCUSED SERVED THEIR SENTENCE: 51 DIED WHILE SERVING THEIR SENTENCE: 3
The ICTY: Results (2)

- 80 sentenced
- 18 acquitted
- 13 referred to a National Jurisdiction
- 36 had their indictments withdrawn or are deceased
The ICTY: Results (3)

• ONGOING PROCEEDINGS:
  20 ACCUSED
  10 accused before the Appeals Chamber
  4 accused currently at trial
The ICTY: Results (4)

The last 4 relevant accused:
- Goran Hadžić
- Radovan Karadžić
- Ratko Mladić
- Vojislav Seselj
ICTY Cases (1)

• Goran Jelisić

Pleased guilty on 29 October 1998, before the start of his trial on 30 November 1998 until 22 September 1999. He pleaded not guilty to genocide. There was no plea agreement.

ICTY Cases (2)

• Radislav Krstić

Trial from 13 March 2000 until 26 June 2001, Judgement rendered on 2 August 2001 (sentence of 46 years).
Appeals Judgement rendered on 19 April 2004 (sentence reduced to 35 years).
Transferred to the United Kingdom on 20 December 2004.
ICTY Cases (3)

• Milomir Stakić

Trial from 16 April 2002 until 15 April 2003, Judgement rendered on 31 July 2003 (sentenced to life imprisonment).

Appeals Judgement rendered on 22 March 2006 (sentence reduced to 40 years).

Transferred to France on 12 January 2007
ICTR

• The International Criminal Tribunal for Rwanda was established by the Security Council in 1994
ICTR: Results

• INDICTED INDIVIDUALS: 93
• COMPLETED CASES: 77
• CASES ON APPEAL: 7
• DETAINNEES ACQUITTED AND RELEASED: 14
• DECEASED BEFORE JUDGMENT: 2
• TRANSFERRED TO NATIONAL JURISDICTIONS: 10
• RELEASED AFTER COMPLETING SENTENCE: 14
• ACCUSED AT LARGE: 9
ICTR: Results

- Theoneste Bagosora: Life Imprisonment for the Crime of Genocide
Primacy of Jurisdiction

The *ad hoc* Tribunals for the Former Yugoslavia and Rwanda have *Primacy* over Domestic Courts Jurisdiction.
ICC

• The Rome Statute of 17 July 1998 established an International Criminal Court, a permanent judicial body
ICC Cases

- **Situation in Democratic Republic of the Congo**
  Thomas Lubanga Dyilo, Germain Katanga, also known as "Simba“, Mathieu Ngudjolo Chui, Bosco Ntaganda

- **Situation in the Central African Republic**
  Jean-Pierre Bemba Gombo

- **Situation in Uganda**
  Joseph Kony, Vincent Otti, Okot Odhiambo, Dominic Ongwen, Raska Lukwiya

- **Situation in Darfur, Sudan**
  Ahmad Muhammad Harun, Ali Muhammad Ali Abd-Al-Rahman Bahar Idriss Abu Garda
ICC Cases

• **Situation in the Republic of Kenya**
  William Samoei Ruto, Joshua Arap Sang, Uhuru Muigai Kenyatta, Walter Osapiri Barasa

• **Situation in Libya**
  Saif Al-Islam Gaddafi, Abdullah Al-Senussi, Muammar Mohammed Abu Minyar Gaddafi (Muammar Gaddafi) (Termination of the case against him: 22 November 2011, following his death)

• **Situation in Côte d’Ivoire**
  Laurent Gbagbo, Simone Gbagbo, Charles Blé Goudé

• **Situation in Mali**

  • **Situation in Central African Republic II**
The Al Bashir Case

Darfur:
Arrest Warrant

- President Omar Hassan Ahmad Al Bashir:
  the first Head of State in Office
- Crimes Against Humanity and War Crimes
Principle of Complementarity

The International Criminal Court has Jurisdiction

when States are *Unable*
or

*Unwilling* to Prosecute

(Article 17 of the Rome Statute)
The First Judgment

Thomas Lubanga Dyilo: War Crimes

March, 14th, 2012:
Guilty of conscripting and enlisting children under age of 15
and using them to participate in hostilities:
Sentenced to 14 years
The Second Judgment

• The ICC convicted Katanga on five counts of war crimes and crimes against humanity.
The Special Court for Sierra Leone

• an independent tribunal established jointly by the United Nations and the Government of Sierra Leone. It is mandated to bring to justice those who bear the greatest responsibility for atrocities committed in Sierra Leone after 30 November 1996.
The Special Court for Sierra Leone

Charles Taylor sentenced to 50 Years in Prison

30 May 2012, (confirmed in appeal, 26 September 2013)

• for planning, aiding and abetting crimes committed by rebel forces in Sierra Leone during the decade-long civil war (acts of terrorism, murder, rape, sexual slavery, outrages upon personal dignity, cruel treatment, other inhumane acts, conscripting or enlisting of child soldiers, enslavement and pillage)
Extraordinary Chambers in the Courts of Cambodia

Agreement between the United Nations and the Kingdom of Cambodia
Extraordinary Chambers in the Courts of Cambodia

Kaing Guek Eav, 67, known as Duch, the first leading Khmer Rouge figure to be tried in connection with the deaths of 1.7 million people when the brutal Communist regime ruled Cambodia from 1975 to 1979

life imprisonment, for crimes against humanity and grave breaches of the 1949 Geneva Conventions

(3 February 2012)
Extraordinary Chambers in the Courts of Cambodia

• 7 August 2014.
• Nuon Chea and Khieu Samphan were found guilty of crimes against humanity and sentenced to life imprisonment.
A Soldier and Honour

• Captain Pierre-Henri Simon (1903-1972), French Army, prisoner of the Germans in WWII:

When a policeman abuses or tortures a suspect, it inevitably diminishes the officer’s humanity.

But when a soldier uses abuses or torture, it is worse because “it is the honour of the nation that becomes engaged.”